

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

**OPERATIVE PLASTERERS and CEMENT MASONS
LOCAL 599 PENSION FUND
and DAN DOPERALSKI (in his capacity as Trustee),**

Plaintiffs,

v.

Case No. 14-cv-01

VALDA PLASTERING COMPANY, INC.,

Defendant.

COMPLAINT

NOW COME the Plaintiffs, by their attorneys, The Previant Law Firm, S.C., by Christopher J. Ahrens, and as and for a cause of action against the Defendant, allege and show to the Court the following:

Jurisdiction and Venue

1. This is an action for collection of delinquent withdrawal liability payments, interest, and penalties incurred by an employer as a result of a withdrawal from a multiemployer pension plan.

2. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"). This Court has jurisdiction over this action under section 4301(c) of ERISA, 29 U.S.C. § 1451(c).

3. Venue lies in this court under section 4301(d) of ERISA, 29 U.S.C. § 1451(d), in that Defendants' principal place of business is located in Dane County, Wisconsin.

Parties

4. Plaintiff Operative Plasterers and Cement Masons Local 599 Pension Fund ("Pension Fund") is a multiemployer plan within the meaning of sections 3(37) and 4001(a)(3) of ERISA, 29 U.S.C. § 1002(37) and 1301(a)(3). The Pension Fund maintains an office at 2901 West Beltline Highway, Suite 100, Madison, Wisconsin 53713.

5. Plaintiff Dan Doperalski is a trustee and a fiduciary of the Pension Fund. Mr. Doperalski maintains an office at 3030 39th Avenue, Kenosha, Wisconsin 53144. Pursuant to section 4301(a)(1) of ERISA, 29 U.S.C. § 1451(a)(1), a fiduciary is authorized to bring civil actions on behalf of the Pension Fund, its participants and beneficiaries for the purpose of collecting withdrawal liability.

6. Defendant Valda Plastering Company, Inc. is a Wisconsin corporation engaged in business with principal offices located at 3625 Elvehjem Road, McFarland, Wisconsin 53558. The registered agent for service of process is Anthony Valenza, Sr. at the same address.

Facts

7. At all times relevant, Defendant was engaged in an industry affecting commerce, as defined by section 301(a) of the LMRA, 29 U.S.C. § 185(a), and is an "employer" as defined by section 3(5) of ERISA, 29 U.S.C. § 1002(5).

8. The Pension Fund determined that as of June 1, 2011, Defendant ceased participation in the Pension Fund and effected a withdrawal, as defined in section 4203 of ERISA, 29 U.S.C. § 1383, from the Pension Fund.

9. By letter dated August 27, 2012, the Pension Fund issued a notice of withdrawal liability in the amount of \$224,858 and demand for payment of withdrawal liability in accordance with sections 4202(2) and 4219(b)(1) of ERISA, 29 U.S.C. §§ 1382(2) and 1399(b)(1). This notice and demand notified Defendant that it was required to discharge its liability through ten (10) quarterly payment in the amount of \$23,159.75 and one (1) quarterly payment in the amount of \$5,933.50. The first quarterly payment of \$23,159.75 was due within sixty (60) days to avoid the additional assessment of penalties and interest. A true and correct copy of the notice and demand with attachments is attached to this complaint and marked as Exhibit A. Defendant did not request a review or otherwise appeal the Pension Fund's determination.

10. Defendant failed to make the required withdrawal liability payments to the Pension Fund. As a result of its failure to make timely payment, liquidated damages of 20% were assessed increasing Defendant's liability to \$44,971.60 with interest at the rate of 1½ % per month.

Claim for Relief

11. Defendant failed to make the required withdrawal liability payment to the Pension Fund and has failed to initiate timely arbitration under section 4221 of ERISA, 29 U.S.C. § 1401 and the governing rules. Consequently, the amount demanded by the Pension Fund is due and owing pursuant to section 4221(b)(1) of ERISA, 29 U.S.C. § 1401(b)(1). After all proper adjustments and credits, Defendant owes the Pension Fund the principal sum of \$269,829.60.

WHEREFORE, Plaintiffs request the following relief:

- a) Judgment against Defendant on behalf of Plaintiffs in the sum of \$269,829.60;
- b) Judgment for interest at the monthly rate 1½%;
- c) Judgment for court costs and reasonable attorneys' fees as required by section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2);
- d) That this Court retain jurisdiction of this case pending compliance with its order; and
- e) For such further or different relief as this Court may deem proper and just.

Dated this 2nd day of January, 2014.

s/Christopher J. Ahrens
Christopher J. Ahrens (SBN 1043237)
THE PREVIANT LAW FIRM, S.C.
1555 North RiverCenter Drive, #202
P. O. Box 12993
Milwaukee, WI 53212
414-271-4500 (Telephone)
414-271-6308 (Fax)
Email: cja@previant.com

Attorney for Plaintiffs